

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3778 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

D N NASHIKKAR

Versus

STATE OF GUJARAT

Appearance:

MR NALIN K THAKKER for Petitioner

MS SIDDHI TALATI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/97

ORAL JUDGEMENT

1. The petitioner, an officer of the Health and Family Welfare Department of the respondent, filed this special civil application and prayer has been made for quashing of the order annexure 'B' dated 26th April, 1985 so far as the junior-most person is concerned, and for direction to the respondent to assign deemed date of promotion to the petitioner in the cadre of Executive Engineer and to give him all the consequential benefits fixation of pay and payment of difference of salary etc..

2. Under the order aforesaid as many as 22 officers were promoted and the prayer made by the petitioner for quashing of the same to the extent of junior-most person therein cannot be accepted as that person has not been impleaded as party to this special civil application.

3. The grievance of the petitioner was that his candidature has been considered for promotion but the result of the Selection Committee was put under sealed cover as the D.E. was pending against him. It has been submitted by the counsel for the petitioner that in the said D.E., the petitioner has been exonerated. On the statement of the petitioner, this Court has ordered on 5th August, 1985 directing the respondent to open the sealed cover and if the petitioner is found suitable for promotion, the Government will immediately consider the same and pass necessary orders accordingly before 31st August, 1985. In pursuance of the aforesaid order of this Court, a communication has now been produced by the petitioner on record of this special civil application wherein it has been stated that the Departmental Promotion Committee had considered the case of the petitioner for promotion, but had not found him suitable for promotion. It is not clear whether the case of the petitioner was considered afresh for promotion or what has been communicated under the aforesaid communication dated 31st August, 1985 was a result of the opening of the sealed cover. The learned counsel for the respondent when asked by the Court is unable to throw any light on this question. However, one thing is clear that no reasons have been given that on what ground the petitioner was not found suitable for promotion. The matter is sub-judice before this Court and this Court had given the direction to the respondent to consider the case of the petitioner for promotion by opening the sealed cover. In whatever way the matter of the petitioner has been taken by the respondent, the reasons should have been given where he was not found suitable for promotion. It is true that it is not incumbent upon the respondent to give the reasons to the officers for their supersession in promotion nor any such rule has been pointed out by the counsel for the petitioner but where the matter is sub-judice before this Court and this Court has given the direction to the respondent to consider the case of the petitioner for promotion by opening the sealed cover then where he was not found suitable, the reasons should have been given so that the matter could have been decided finally by this Court. However, it has not been done.

4. In the result, this special civil application is

disposed of with the direction to the respondent to give out the reasons to the petitioner for his non-selection for promotion on the post of Executive Engineer within a period of three months from the date of receipt of certified copy of this order. In case the petitioner is not satisfied with those reasons, it shall be open to him to take appropriate legal remedy available in the matter. The Special Civil Application and Rule stand disposed of in the aforesaid terms with no order as to costs.
